

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

DAVID LEE MOORE (#1024033),

Petitioner,

v.

ACTION NO. 2:22cv208

**HAROLD W. CLARKE, Director,
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254 submitted by pro se Petitioner David Lee Moore (“Moore” or “Petitioner”). The petition alleges violation of petitioner’s constitutional rights pertaining to his 1999 convictions and sentencings in the Newport News Circuit Court for first-degree murder, stabbing in the commission of a felony, and attempted breaking and entering. As a result of the convictions, Petitioner was sentenced to serve a prison term of sixty-three years.

The petition was referred to a United States Magistrate Judge for Report and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge’s Report and Recommendation was filed October 19, 2022, finding Moore’s claims are time barred and he has not presented sufficient evidence to excuse the late filing. The Report and Recommendation advised each party of his right to object and the time limit for doing so. On November 14, 2022, the court received Petitioner’s objections, however, he still did not provide sufficient evidence to warrant equitable tolling, nor did he provide sufficient evidence of actual

innocence to overcome the time-bar. The Respondent did not file any response to the objections, and the time for doing so has now expired.

The court, having reviewed the record and examined the objections filed by the Petitioner to the Magistrate Judge's Report and having made *de novo* findings with respect to the portion objected to, does hereby adopt and approve the findings and recommendations set forth in Part IV of the Report and Recommendation filed October 19, 2022. It is therefore **ORDERED** that Respondent's Motion to Dismiss (ECF No. 14) is **GRANTED**, and the Petition is hereby **DENIED** and **DISMISSED WITH PREJUDICE**.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/

ARENDA L. WRIGHT ALLEN
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 8, 2023